BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of the State of Illinois is reported in 380 Ill. 447.

The decree rendered (Rec. 9) on the hearing in the Circuit Court of Cook County which sustained the defendant's motion to dismiss complaint for Writ of Mandamus was entered January 9, 1941.

Jurisdiction

The decision of the Supreme Court of Illinois, sought to be reviewed, was entered September 21, 1942 (Rec. 14-19). Petition for rehearing was denied in the Supreme Court of Illinois November 10, 1942 (Rec. 40).

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 344 (b)), also under Rule 38 of this Court.

STATEMENT OF THE CASE

The material facts and the questions involved are set forth in the foregoing petition.

SPECIFICATIONS OF ERRORS

The Illinois Supreme Court erred:

1. In failing to hold that denial to the City of Highland Park of a credit refund for taxes illegally exacted of it under duress, constituted a violation of the 14th Amendment of the Constitution of the United States.

2. In failing to hold that under the 14th Amendment of the Constitution of the United States all of its citizens are entitled to equal protection of the laws of the State.

3. In holding the City of Highland Park was not entitled constitutionally to a refund of taxes illegally exacted of it by duress when paid under protest.

4. In holding that the City of Highland Park was not entitled constitutionally to a refund of illegal taxes paid under an unconstitutional act which provided for refund in the event of payment by mistake of fact or an error of law.

5. In failing to hold that the City of Highland Park was entitled to a Writ of Mandamus for a credit of taxes wrongfully exacted of it under an unconstitutional act.

SUMMARY OF ARGUMENT.

I.

The refusal of a State to return a tax collected by duress under an unconstitutional taxing act violates the 14th Amendment of the Constitution of the United States.

II.

Denial of the credit under the refund section of an unconstitutional tax act (when taxes are paid under duress) deprives petitioner of property without due process of law in violation of the 14th Amendment of the Constitution of the United States.

III.

A municipality is denied equal protection of the law in violation of the 14th Amendment of the Constitution of the United States when it is denied a tax refund for taxes collected by duress under an unconstitutional tax act, where the decision holding the act unconstitutional awarded refunds to similar taxpayers in such action.

ARGUMENT.

I.

The refusal of a State to return a tax collected by duress under an unconstitutional taxing act violates the 14th Amendment of the Constitution of the United States.

This Court has held that where a State collects an illegal tax under compulsion and duress and refuses to return the tax, it deprives a citizen of property without due process of law in violation of the 14th Amendment of the Constitution of the United States. In *Ward* v. *Board of County Commissioners of Love County*, 253 U. S. 17, 23-24, it was said:

> "* * * the county demanded that the taxes be paid, and by threatening to sell the lands of these claimants and actually selling other lands similarly situated made it appear to the claimants that they must choose between paying the taxes and losing their lands. To prevent a sale and to avoid the imposition of a penalty of eighteen per cent they yielded to the county's demand and paid the taxes, protesting and objecting at the time that the same were illegal. The monies thus collected were obtained by coercive means—by compulsion. * * *
>
> As the payment was not voluntary, but made under compulsion, no statutory authority was essential to enable or require the county to refund the money. It is a well settled rule that 'money got through imposition' may be recovered back; and, as this Court has said on several occasions, 'the obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.' *Marsh*

> v. *Fulton County*, 10 Wall. 676, 684; *City of Louisiana* v. *Wood*, 102 U. S. 294, 298-299; *Chapman* v. *County of Douglas*, 107 U. S. 348, 355. To say that the county could collect these unlawful taxes by coercive means and not incur any obligation to pay them back is nothing short of saying that it could take or appropriate the property of these Indian allottees arbitrarily and without due process of law. Of course this would be in contravention of the Fourteenth Amendment, which binds the county as an agency of the State."

To the same effect is *Carpenter* v. *Shaw, State Auditor of Oklahoma*, 280 U. S. 363.

In *Montana National Bank* v. *Yellowstone County, et al.* (Montana, 1928), 276 U. S. 499, 504, this Court said:

> "* * * The statutes, as thus construed and applied to the concrete facts of the case, were invalid; and this is enough to justify the challenge here under consideration (263 U. S. 418, 422—259 U. S. 503, 510). Plaintiff in error cannot be deprived of its legal right to recover the amount of the tax unlawfully exacted of it by the later decision which, while repudiating the construction under which the unlawful exaction was made, leaves the money thus exacted in the public treasury."

In *Chicago B. & V. R. R.* v. *Chicago*, 166 U. S. 226, 234-5, where a judgment was rendered for $1.00 in a condemnation proceeding, and the condemnation judgment was affirmed in the Illinois Supreme Court, the United States Supreme Court in affirming the decision stated:

> "* * * But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amend-

> ment. In determining what is due proces of law regard must be had to substance, not to form. This court, referring to the Fourteenth Amendment, has said: 'Can a State make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the States is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation.' * * *"

This Court held in *Myles Salt Co.* v. *Iberia Drainage District,* 239 U. S. 478, 484, that a wrongful decision by a State Court can deprive a person of property without due process of law.

In *J. & A. Freiberg Co.* v. *Dawson,* 274 Fed. 420, 431, affirmed in *Dawson* v. *Kentucky Distilleries Co.,* 255 U. S. 288, the Court stated:

> *"Is there lack of due process of law?* This is only another form of stating the ultimate question. If the law is invalid for any of the reasons alleged, it is obvious that to enforce collection of the tax is to take the plaintiff's property without due process; hence we proceed to the reasons alleged."

Petitioner's complaint alleged that the installments of taxes were paid under protest; and through a mistake of fact or error of law; plaintiff was ordered and directed to pay the tax or be subject to onerous and confiscatory fines and penalties for which it was in no way responsible (Rec. 37).

The Department of Finance, which was vested under the Act with authority to enforce it, wrote petitioner threatening prosecution for a misdemeanor as follows:

> "We advise that the determination of whether or not a credit is due to any public utility rests with this Department and not with the public utility. We, therefore, advise you that you must not make this deduc-

tion and that any deduction arbitrarily so made is a violation of Article 9 of the Rules and Regulations relating to the Retailers' Occupation Tax Act. Any wilful violation of Article 9, or any other article of the Rules and Regulations relating to the Retailers' Occupation Tax Act, is covered by Section 13 of the Public Utility Tax Act itself, which Section reads as follows:

> 'Any public utility referred to in section 1, in this State, which fails to make a return, or which wilfully violates any rule or regulation of the department for the administration and enforcement of the provisions of this Act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00).''

In view of this warning, if such deduction is made, a hearing will be at once scheduled whereat a record will be made under the above noted section of the Public Utility Tax Act'' (Rec. 37).

In addition, the Public Utility Tax Act in Section 5 (Illinois 1935 Revised Statutes, Chap. 120, Par. 444) provided for a penalty of twenty-five per cent (25%) for failure to pay the tax and an accumulating interest of one per cent (1%) per month. It can not be doubted that payment of the tax was made as a result of the duress and compulsion. This fact is admitted by the motion to dismiss. The payments as protested put the State on notice that plaintiff was not submitting to the duress and compulsion.

Where the State promises to return the money and then fails the taxpayer is doubly injured. First, the taxpayer is lulled into a feeling of security—deprived of his vigilance. Then refused relief because the tax which he paid by compulsion and under protest is void and another

remedy from which he is now barred might have given him relief.

A person acting under duress and compulsion does not have to choose his remedy at his peril. In *Union Pacific R. R. Co.* v. *Public Service Commission of Missouri*, 248 U. S. 67, 69-70, this Court held:

> "* * * It always is for the interest of a party under duress to choose a lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called. *The Eliza Lines*, 199 U. S. 119, 130, 131. If, as may be, the supreme court of the State regards or will regard this statute as inapplicable, *Public Service Commission* v. *Union Pacific Railroad Co.*, 271 Missouri, 258, probably the State would not wish to retain the charge but we repeat, the Railroad Company was not bound to take the risk of the decision, and no proceeding has been pointed out to us by which it adequately could have avoided evils, that made it practically impossible not to comply with the terms of the law, *Atchison, Topeka & Santa Fe Railway Co.* v. *O'Connor*, 223 U. S. 280, 286."

The Illinois Supreme Court intimates petitioner could have paid under protest while the fact that it did is fully admitted by defendant's motion to strike the complaint. This motion to strike was granted.

The Illinois Supreme Court has said in next to final paragraph of its opinion:

> "* * * appellant has not pursued the remedy set out in the statute to recover for invalid taxes paid under protest. * * *" (Rec. 19.)

From this it might seem the provision referred to by the Court was in the tax act or refund section in question. Not so, however, as the Court is referring to an optional choice given a taxpayer. The two remedies are entirely independent. The 14th Amendment does not require that

a citizen must choose at his peril the remedy which the court will approve when both remedies are valid. A citizen has a right to rely upon a valid remedy and this remedy can not be taken away by a rule of construction. To do so deprives the citizen of property without due process of law. He is not prejudiced or deprived of any rights if he fails to select the Court's choice of remedies. The 1935 independent statutory provision to which the Court refers speaks for itself as follows:

> "35. Custody and deposit of moneys paid under protest.] § 2a. It shall be the duty of every officer, board, commission, commissioner, department, institute, arm or agency brought within the provisions of this Act by section 1 hereof to [notify the State Treasurer as to money paid to such officer, board, commission, commissioner, department, institute, arm or agency, under protest and the Treasurer shall place such money in a special fund to be known as the protest fund. At the expiration of thirty days from the date of payment the money shall be transferred from the protest fund to the appropriate fund in which it would have been placed had there been payment without protest] unless the party making such payment shall within such period file a bill in chancery and secure a temporary injunction restraining the making of such [transfer], in which case such payment shall be held [in the protest fund] until the final order or decree of the court."
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> Illinois Revised Statutes (1935 State Bar Assn. Edition), Chap. 127b, Par. 35, Sec. 2a.

There is nothing inoperative about the so-called protest statute that overrides the refund section the legislature put in the Public Utility Tax Act. There is no connection between the two acts nor any concern of dependency of either on the other. The refund section in the tax act did not require every taxpayer to file an injunction with each payment or lose his right to the refund. Federal

rights here are neither increased nor diminished by an optional privilege for injunction. The injunction right existed at the court's discretion independently of the statutory act on the custody of protest money.

II.

Denial of the credit under the refund section of an unconstitutional tax act (when taxes are paid under duress) deprives petitioner of property without due process of law in violation of the 14th Amendment of the Constitution of the United States.

In the State of Illinois because of constitutional restrictions (Illinois Constitution, Article IV, Section 17) illegal taxes can not be refunded from the State Treasury without a specific appropriation, even where a refund section is provided. (*Adams* v. *Nudelman*, 375 Ill. 217.) This applies equally to payments made under duress.

In the complaint in this cause, it was alleged:

> "That plaintiff cannot sue or bring any action against the State of Illinois for the recovery of taxes illegally and erroneously exacted and collected from it, or for any part thereof; that it has no adequate remedy other than a Writ of Mandamus to compel the Director of Finance of the Department of Finance of the State of Illinois to issue a credit or to grant the credit by reason of Section 6 of the Act; that it is the duty of the Director of Finance in accordance with Section 6 to grant and permit a credit to the extent of the taxes erroneously collected." (Rec. 5-6.)

This allegation also is admitted by the motion to dismiss, which motion the Court granted.

The Illinois Supreme Court denied petitioner's request, that it be allowed to ask for a money judgment (Rec. 28-29), by denying the petition for rehearing.

Therefore, the only recourse open to petitioner is a credit provided for in the Refund Section 6 of the Act which is as follows:

> "445. Erroneous payments—Credit.] § 6. If it shall appear that an amount of tax, penalty or interest has been paid which was not due under the provisions of this Act, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Act from the public utility which made the erroneous payment, or such amount shall be refunded to such public utility by the department."
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> Illinois Revised Statutes (1935 State Bar Assn. Edition), Chap. 120.

To deny plaintiff credit in the amount of its $4,796.97 for taxes paid, because of an erroneous application of a rule of construction, deprives plaintiff of its only recourse and of property without due process of law. To hold, as the Illinois Court has, that this refund section which provided for this error of law (unconstitutionality) fell because the error of law occurred, deprives plaintiff of property without due process of law. In other words, when the contingency provided for in the refund section occurred, the Court should not have held because the contingency occurred the refund section fell and was ineffective. Certainly the unconstitutionality of this Act was the kind of "legal error" provided for in the refund section.

Upon the Act being held unconstitutional on February 12, 1937, the Legislature of Illinois immediately passed a new Public Utility Tax Act, and which was approved by the Governor of Illinois March 11, 1937, even before the Petition for Rehearing in that case was denied on April 7, 1937. This new Public Utility Tax Act was the same as the previous Act except for the elimination of the unconstitutional feature. Under the new Act the City of Highland

Park was relieved of the tax on the sales of water by its municipal plant.

This second Act in its Section 16 revealed that because of the unconstitutionality of the previous Act an emergency existed and that the new Act was intended to replace the first Act immediately. The new Act bore the same title, contained the same sections and was a duplicate Act except that the unconstitutional objections and water were eliminated. For the convenience of the Court we set out this Section:

> "WHEREAS, the Public Utility Tax Act, approved June 27, 1935, has been declared unconstitutional and substantial source of revenue for the relief of persons in destitute and necessitous circumstances has been eliminated by said holding, and whereas it is vitally necessary to the health, safety and well-being of such persons and to prevent untold hardship and suffering among such persons that moneys for their relief be available immediately prior to the 1st day of July: THEREFORE, an emergency exists and this Act shall take effect upon its passage."
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> Illinois Session Laws 1937, Sec. 16, Page 1057.

By reason of Section 2 of the Illinois Chapter on Statutes the valid portions of the first Act were continued in the second Act. Said Section 2 of the Chapter on Statutes provides as follows:

> "2. Construction of revised acts.] § 2. The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such prior provisions, and not as a new enactment."
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> Illinois Revised Statutes (State Bar Assn. Edition), Chap. 131.

This section of the statute has been liberally construed by the Courts of Illinois. The Illinois courts have even

held that the theory of the continuation of a statute prevents the legal re-enactment of an Act held to be unconstitutional and that an attempt to re-enact an unconstitutional act is void by virtue of such coninuation. (*Salzman* v. *Boeing*, 304 Ill. App. 405.)

"In ascertaining the intention of the legislature in amending an act the state of the law prior to the amendments must be considered, and the provisions of the statute as amended, so far as they are the same as those of the prior statute, shall be construed as a continuation of such prior provisions. Section 2, ch. 131, Ill. Rev. Stat. 1939 [Jones Ill. Stats. Ann. 27.14.] *Spiehs* v. *Insull*, 278 Ill. 184; *Landry* v. *E. G. Shinner & Co., Inc.*, 344 Ill. 579."

Taman v. *Marcus*, 310 Ill. App. 512, 514, transferred 375 Ill. 210.

"* * * Where the legislature enacts an amendatory statute, providing that a certain act or section of an act shall be amended so as to read as the same is repeated in the amendatory act, such portions of the old law as are retained, either literally or substantially, are regarded as a continuation of the old law and not as a new enactment. * * *"

City of Chicago v. *Foley*, 335 Ill. 584, 589.

"* * * Moreover, when the General Assembly amends a statute and no change is made in parts of it, the repeated portions, either literally or substantially, are regarded as a continuation of the existing law and not as the enactment of a new law upon the subject. (*People* v. *Lloyd*, 304 Ill. 23; *Svenson* v. *Hanson*, 289 id. 242.) * * *"

People ex rel. Adams v. *N. Y., C. & St. L. R. R. Co.*, 316 Ill. 452, 457.

"* * * Where the law on a particular subject is revised and re-written, only the provisions of the old law which are omitted from the revised act are repealed

and all provisions of the old law retained in the new act are regarded as having been continuously in force. (*Mette* v. *Feltgen*, 148 Ill. 357.) * * *"

Merlo v. *Coal and Mining Co.*, 258 Ill. 328, 333-334.

The refund section in the 1937 Public Utility Tax Act was a continuation of the valid existing refund section in the 1935 Act. The fact that the 1935 refund section continues determines that the 1935 refund section still exists in the 1937 Act.

It has been held in Illinois that the credit granted under a refund section is transferable (*People ex rel. Ben Stone* v. *Nudelman*, 376 Ill. 535). Such a refund section has been held to be constitutional (*People ex rel. Swartchild* v. *Carter*, 376 Ill. 590). Therefore, credit issued in accordance with provisions of the refund section of the Act would permit petitioner to obtain money illegally exacted of it under duress. To not grant this credit in accordance with the refund section deprived petitioner of its property, illegally appropriated by the State, without due process of law in violation of the 14th Amendment.

If this State court decision stands, a new instrument of extortion has been created.

Under the decision of the State court, a State can pass with impunity an unconstitutional tax act, and by the inducement of a valid refund section confiscate the citizen's property. When called upon to comply with the valid refund section, the State, under this decision, can refuse to return the property, despite the valid refund section, on the ground that the tax act was unconstitutional. Thus this decision legalizes a possible fraud upon citizens. Its result is abhorrent to sound government.

III.

A municipality is denied equal protection of the law in violation of the 14th Amendment of the Constitution of the United States when it is denied a tax refund for taxes collected by duress under an unconstitutional tax act, where the decision holding the act unconstitutional awarded refunds to similar taxpayers in such action.

Under the refund section providing for the return of taxes illegally collected in the event of mistake of fact or error of law, there was no requirement of any special method to be pursued to recover such taxes, and there was no requirement for protest or duress, nor was there a requirement that an injunction be obtained.

In the Supreme Court case holding the tax act unconstitutional (*City of Chicago* v. *Ames*, 365 Ill. 529), certain municipalities were allowed to recover the tax money which they had paid under the act and under protest. Under this refund section, in the absence of any special requirement, every municipality would and should be entitled to the monies exacted of them under the illegal act with its compulsory provisions for enforcement. There was no contention by defendant in this case that the tax act was not unconstitutional and, therefore, the provisions of the refund section became operative alike for all taxpayers. To deny relief to this municipality despite the relief granted to the other municipalities, results in a discrimination against this petitioner, violating the equal protection clause of the 14th Amendment of the Constitution of the United States.

It is true, as heretofore shown, that in Illinois there is a statutory provision that if a tax is paid under protest the taxpayer may apply for an injunction within thirty

days after payment, and that the Court may grant a temporary injunction, as was done in *City of Chicago* v. *Ames*. This statute is not mandatory upon the Court; an injunction may or may not be issued, as the Court sees fit. The right to the injunction in all instances rests within the discretion of the Court. In fact the remedy of a temporary injunction has been denied in many tax cases by the Courts of Illinois, as for instance in *Vause & Striegel, Inc.* v. *McKibbin*, 379 Ill. 169. At the time that the 1935 Public Utility Tax Act was enacted, and for six months thereafter, this statutory provision for a temporary injunction required the obtaining of an injunction within thirty days after each payment of any protested tax. The tax in this case was required to be paid monthly. Many of the payments in this case, as will appear from the Record (Page 3) involved some payments of a few dollars or less; one of the payments being as small as ten cents. In view of the monthly payments and the small amount of the tax, this requirement of filing a bill in chancery and obtaining a temporary injunction for each payment was prohibitive from the standpoint of cost and was an effective bar to the use of the injunction. Within six months after the Illinois Supreme Court had held this Public Utility Tax Act unconstitutional, whereby petitioner's payments of the tax were terminated, the legislature of Illinois, recognizing the injustice and the defect in the Act providing for the injunction, amended the injunction act so as to permit one temporary injunction to cover all succeeding payments of a contested tax. (Illinois Revised Statutes (1937 State Bar Assn. Edition), Chap. 127, Par. 172, Sec. 2a.) Thus petitioner could not protect itself by one temporary injunction at the time it was required to pay the tax. It is to be conceded that a large city such as Chicago,—plaintiff in *City of Chicago* v. *Ames* (365 Ill. 529) would have such substan-

tial monthly payments that the injunction statute afforded it adequate relief even under the previous provisions, and even without the refund section. This state of facts, however, were not existent with the petitioner, City of Highland Park, whose payments for many months were of nominal amounts. This petitioner did not have such an adequate remedy for protection against the taxes exacted of it by duress because, unfortunately, it was a small city.

There is no requirement under the 14th Amendment of the Constitution of the United States that a citizen deprived of property without due process of law must first seek an injunction or any other special relief, nor is there any in Illinois, although a taxpayer may apply for an injunction if he wishes. Especially is there no such requirement where a refund section is provided, as in the case at bar. An unqualified refund section in any tax act dispenses with the need for an injunction.

The effect of the decision in this case is to judicially validate or ratify an unconstitutional tax. It gives rebirth to a tax act which was void, by the simple expedient of allowing the State to keep the money. The Court has in effect nullified the act in so far as the State is concerned but enforced it against this taxpayer. If the act had sufficient validity for the State to keep the money, the act should have sufficient validity in the refund section for the State to return the money.

The legislaure can not ratify a void act. A defect can be cured but validity can not be given *ex post facto.*

In the case of *Forbes Boat Line* v. *Board of Commissioners,* 258 U. S. 338, the Board of Commissioners without authority and by duress collected tolls from the plaintiff for passage through a canal. Plaintiff sued to recover for tolls collected for two years. After the case had been sub-

mitted to the Supreme Court of Florida, the legislature of Florida passed an act authorizing the collection of the tolls and ratifying past collections.

Justice Holmes in upholding the plaintiff's right stated (page 339):

> "Stripped of conciliatory phrases the question is whether a state legislature can take away from a private party a right to recover money that is due when the act [ratifying collection of toll] is passed. * * *"

In denying the State the right Justice Holmes held at page 340:

> "* * * Defendant owed the plaintiff a definite sum of money that it had extorted from the plaintiff without right. It is hard to find any ground for saying that the promise of the law that the public force shall be at the plaintiff's disposal is less absolute than it is when the claim is for goods sold. Yet no one would say that a claim for goods sold could be abolished without compensation. * * *"

In *Graham & Foster* v. *Goodcell*, 282 U. S. 409, at page 431, the Court stated:

> "* * * If the Congress did not have the authority to deal by a curative statute with the taxpayers' asserted substantive right, in the circumstances described, it could not be concluded that the Congress could accomplish the same result by denying to the taxpayers all remedy both as against the United States and also as against the one who committed the wrong. See *Brinkerhoff-Faris Trust & Savings Company* v. *Hill*, 281 U. S. 673, 679, 680."

The grounds of the decision in the State Court was that petitioner had another remedy if it had pursued it, but the Court in its decision admits that remedy is gone. Petitioner had two remedies, injunction or the refund section. Because the injunction remedy did not adequately serve

the purposes of this petitioner, it chose the refund section which was a valid constitutional enactment. To now hold that petitioner is denied relief because it did not choose the other remedy when petitioner had a right to rely upon the refund section is an effective way of denying petitioner all relief. The Illinois Supreme Court did not hold that the refund section was invalid or defective but held because the taxing clause fell the whole act fell. This holding was made despite the refund section's provision for this contingency of unconstitutionality.

The only distinction the Supreme Court of Illinois makes between *City of Chicago* v. *Ames* and the case at bar is that an injunction was procured in the former and not in the latter. Both plaintiffs conducted themselves in an identical manner including protesting.

The refund section did not require an injunction or any other action than payment of a tax that was not due. A citizen does not have to gamble on which of two valid remedies the court will recognize. The remedies are a matter of right. To grant relief to one group under one remedy and to deny it to another group under an equally valid remedy deprives the latter of equal protection of the law. A remedy does not exist at the caprice of the court.

CONCLUSION

The State of Illinois passed an unconstitutional Public Utility Tax Act. That Act protected a taxpayer against all mistakes of fact and errors of law. The legislature had made an "error of law" which caused the unconstitutionality. The tax act also carried drastic provisions to compel payment of the tax. The State threatened to enforce these rigid, penal provisions and ordered petitioner to pay this tax.

Petitioner cautiously paid its tax under protest to avoid result of the duress thus exercised against it. When the Supreme Court of Illinois ruled the tax was unconstitutional, petitioner, after demand, brought action to recover the taxes wrongfully exacted of it. The Supreme Court of Illinois then held petitioner was not entitled to have its taxes returned because the refund section fell with the unconstitutional act and refused to consider petitioner's request for a cash refund.

Petitioner now asks protection against the deprivation of its property to which it believes it has been subjected without due process of law. Petitioner asserts the 14th Amendment of the Constitution of the United States affords it relief from this legal ensnarement.

Respectfully submitted,

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